

### Remarks

Claims 4 through 6 are presently pending.

A. By the present amendment, claim 4 has been amended to recite that the metatarsal guard does not have any openings therein and thus further distinguishes over the patents to Fortin (5,457,898) and Krajcir et al (4,908,963).

Applicant's metatarsal guard, although of simple structure, particularly as compared to the Fortin and Krajcir et al structure, nevertheless meets the present industrial requirements for impact resistant safety shoes. In contrast to the Fortin metatarsal guard, applicant's simple structure does not require Fortin's relatively long right side slit 19 or the corresponding relatively long left side slit to facilitate flexion of the metatarsal guard 10 and to permit flexion of the foot of the wearer. Likewise, applicant's structure does not require the laterally adjacent tongues 21 of Fortin et al which spread apart from each other to follow the movement of the foot when the wearer is walking and thereby prevent the metatarsal guard 10 from impeding walking. Nor does applicant's structure require the flap 22 of Fortin to distribute the load on the different tongues 21. Applicant has found that its simple structure can avoid the use of all these elements and still meet the present industrial requirements for impact resistant safety shoes and provide flexibility to the wearer.

Similarly, applicant's simple structure does not require the complex series of ribs 10, 11, 12 and 13, joined by webs 14, 15 and 16 which form the metatarsal guard of Krajcir et al. Here, again applicant's simple structure avoids the more complicated structure of Krajcir et al while still meeting the present industrial requirements for impact resistant safety shoes.

B. The rejection of claims 4-6 under 35 USC 102(b) as being anticipated by Fortin is

respectfully traversed for the same reasons as presented in the May 9, 2003 amendment.

Further, with respect to claim 5, neither Fortin or Krajcir et al has a convex arch portion without any openings therein and with respect to claim 6, neither reference has support legs which are of less width than the convex arch portion.

C. The rejection of claims 4-6 under 35 U.S.C. 102(b) as being anticipated by Krajcir et al is traversed for the same reasons as presented in the May 9, 2003 amendment. In addition, the comments in section B above with respect to the patentability of claims 5 and 6 over Krajcir et al are also applicable to the present rejection.

D. The rejection of claims 4-6 under 35 U.S.C. 103(a) as being unpatentable over Fortin is traversed for the same reasons as presented in the May 9, 2003 amendment. Here, again, the comments in section B above with respect to the patentability of claims 5 and 6 over Fortin are applicable to the present rejection.

### Conclusion

The relatively complex metatarsal guards of Fortin and Krajcir et al indicate that neither patentee recognized that a metatarsal guard of simple construction, such as the metatarsal guard of the present invention, would both meet the industrial requirements for impact resistant safety shoes and also provide the required flexibility to the wearer of a safety shoe incorporating the metatarsal guard. For all the foregoing reasons, it is respectfully submitted that claims 4-6 are patentable over the prior art of record.

Dated: July 24, 2003

Respectfully submitted,

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